

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARVEL CHARACTERS, INC.,

Plaintiff,

v.

NANCI SOLO and ERIK COLAN,

Defendants.

Civil Action No. 1:21-cv-5316-DG-TAM

**FIRST SUPPLEMENTAL
COMPLAINT FOR
DECLARATORY RELIEF**

NANCI SOLO and ERIK COLAN,

Counterclaimants,

v.

MARVEL CHARACTERS, INC. and DOES
1-10, inclusive,

Counterclaim-Defendants.

Pursuant to Federal Procedure Rule 15(d), plaintiff Marvel Characters, Inc. (“MCI”) submits this First Supplemental Complaint, which alleges facts occurring after the original complaint was filed and makes claims against the above-named defendants that could not have been pleaded earlier.

INTRODUCTION

1. This First Supplemental Complaint incorporates by reference the allegations in paragraphs 1 through 30 of the Complaint, ECF No. 1.

2. Since MCI filed the initial Complaint, defendants Nanci Solo and Erik Colan, acting as the heirs of Gene Colan, have served an additional termination notice in an invalid attempt to acquire rights to other intellectual property in a comic book story published by MCI or its predecessors (collectively, “Marvel”) in 1968.

3. This termination notice is no more proper than those addressed in the initial Complaint. Marvel had the right to exercise creative control over Gene Colan's contributions and paid him a per-page rate for his work. When Gene Colan worked for Marvel, he did so with the expectation that Marvel would pay him. And Gene Colan never held the copyright in the famous Marvel characters and comic book story at issue in the most recent termination notice; rather, Marvel does, as evidenced by the relevant copyright registration notice itself. Marvel thus brings this declaratory relief action, pursuant to 28 U.S.C. § 2201, in response to defendants' improper attempt to acquire Marvel's intellectual property.

ADDITIONAL FACTUAL ALLEGATIONS

4. At all relevant times, Gene Colan was engaged as a comic book artist by Marvel in New York, New York to contribute to the comic book story at issue in the most recent termination notice (the "Work").

5. Any contributions Gene Colan made were at Marvel's instance and expense.

6. Marvel editorial staff had the right to exercise creative control over Gene Colan's contributions, and Marvel paid Gene Colan a per-page rate for his contributions. When Gene Colan worked for Marvel, he did so with the expectation that Marvel would pay him.

7. Gene Colan did not obtain any ownership interest in or to any contributions he made.

8. Marvel registered a copyright in and to the Work, which is copyrightable subject matter under the copyright laws of the United States. The Register of Copyrights recorded the registration, as set forth in Exhibit 1 to this complaint. Marvel has complied in all relevant respects with all laws governing copyright.

9. On approximately September 29, 2021, defendants served a notice of termination

on Marvel. Defendants claim to have a sufficient interest in the Work to exercise purported rights of termination under the termination provisions of the Copyright Act, 17 U.S.C. § 304(c), and the regulations thereunder.

10. The notices specifically seek to “terminate all pre-January 1, 1978 exclusive or non-exclusive grants of the transfer or license of the renewal copyright(s) in and to” certain “illustrated comic book stor[ies]” that were allegedly “authored or co-authored” by Gene Colan and published by Marvel in 1968. The notices specify an effective termination date of October 16, 2024.

11. The comic book title identified in the notice is *Marvel Super-Heroes*. The notice purportedly terminates an alleged grant of copyright interests in all characters, story elements, and “indicia” in the comic books, as well as “all material” allegedly “authored or co-authored by Eugene J. Colan (in any and all medium(s), whenever created) that was reasonably associated with” these works and “registered with the United States Copyright Office and/or published within the termination time window, as defined by 17 U.S.C. § 304(c), and the” purported “effective date of this Notice of Termination.”

12. A true and correct copy of the notice is attached hereto as Exhibit 2.

COUNT I: ACTION FOR DECLARATORY RELIEF
[As to the Validity of All Notices]

13. Marvel repeats and realleges each allegation contained in paragraphs 1 through 12 of this complaint as if fully set forth herein.

14. Defendants have served Marvel with the termination notice described above. On information and belief, they submitted the notice for recordation with the U.S. Copyright Office.

15. The notice is invalid as a matter of law because the Work was created as work made for hire, and there are no termination rights for works made for hire. *See* 17 U.S.C.

§ 304(c).

16. The Work was made for hire because it was created at Marvel's instance and expense.

17. Any contributions Gene Colan made to the Work were done at the instance of Marvel's editorial staff, who had the right to exercise creative control over Gene Colan's contributions.

18. Any contributions Gene Colan made to the Work were done at Marvel's expense because Marvel paid Gene Colan a per-page rate for his contributions, Gene Colan made those contributions to the Work with the expectation that Marvel would pay him, and Gene Colan did not obtain any ownership interest in or to his contributions.

19. Marvel has a real and reasonable apprehension of litigation over any claim by defendants that Marvel's exploitation of the Work after the alleged termination dates infringes their purported rights.

20. There now exists between the parties an actual and justiciable controversy concerning the validity of the termination notices and the respective rights of Marvel, on the one hand, and defendants, on the other.

21. A declaration is necessary and appropriate at this time in light of the purported effective termination dates and the ongoing exploitation of the Work and the development of new works derivative of the Work.

22. Marvel has no adequate remedy at law.

23. Accordingly, Marvel seeks, pursuant to 28 U.S.C. § 2201, a judgment from this Court that the notices are invalid and therefore that Marvel will not lose its copyright interest in the Work on the alleged termination dates.

PRAYER FOR RELIEF

WHEREFORE, Marvel prays for a judgment against defendants Nanci Solo and Erik Colan as follows:

- A. For a declaration that the termination notices are invalid;
- B. For Marvel's attorneys' fees and costs incurred; and
- C. For such other and further relief as the Court deems just and equitable.

Dated: April 1, 2022

Respectfully Submitted,

O'MELVENY & MYERS LLP

By: /s/ Molly M. Lens

Molly M. Lens

Daniel M. Petrocelli*

dpetrocelli@omm.com

Molly M. Lens

mlens@omm.com

Danielle Feuer*

dfeuer@omm.com

1999 Avenue of the Stars, 8th Floor

Los Angeles, California 90067

Telephone: (310) 553-6700

Facsimile: (310) 246-6779

Allen W. Burton

aburton@omm.com

Times Square Tower

7 Times Square

New York, NY 10036

Telephone: (212)

Facsimile:

Kendall Turner*

kendallturner@omm.com

1625 I Street NW

Washington, DC 20006

Telephone: (202) 383-5300

Facsimile: (202) 383-5414

* Admitted pro hac vice

*Attorneys for Plaintiff Marvel Characters,
Inc.*

RECEIVED

OCT 04 2021

ALAN BRAVERMAN

NOTICE OF TERMINATION

"GUARDIANS OF THE GALAXY"

To: Marvel Entertainment, LLC
Marvel Worldwide, Inc.
Marvel Property, Inc.
Marvel Characters, Inc.
1290 Avenue of the Americas
New York, NY 10104
Attn: John Turitzin, Chief Counsel
Eli Bard, Deputy Chief Counsel

Marvel Studios, LLC
MVL Rights, LLC
MVL Development, LLC
Marvel Characters, Inc.
500 South Buena Vista Street
Burbank, CA 91521
Attn: David Galluzzi, Chief Counsel

The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521
Attn: Alan Braverman, General Counsel

PLEASE TAKE NOTICE that pursuant to Section 304(c) of the United States Copyright Act (17 U.S.C. § 304(c)) and the regulations issued thereunder by the Register of Copyrights, 37 C.F.R. § 201.10, Nanci Solo and Erik Colan, the children of the deceased author Eugene J. Colan, being the persons entitled to terminate copyright transfers by the author pursuant to said statutory provisions, hereby terminate all pre-January 1, 1978 exclusive or non-exclusive grants of the transfer or license of the renewal copyright(s) in and to the illustrated comic book story entitled "Earth Shall Overcome!" (which story contains the first appearances of the characters Charlie-27, Major Vance Astro, Martinex T'Naga, and Yondu Udonta – collectively, the "Guardians of the Galaxy"), co-authored by Eugene J. Colan (a.k.a. Gene Colan), and published in *Marvel Super-Heroes*, Vol. 1, No. 18, and set forth in connection therewith the following:

1. The names and addresses of the grantees and/or successors in title whose rights are being terminated are as follows: Marvel Entertainment, LLC, Marvel Worldwide, Inc., Marvel Property, Inc., Marvel Characters, Inc., 1290 Avenue of the Americas, New York, NY 10104;

Marvel Studios, LLC, MVL Rights, LLC, MVL Development, LLC, Marvel Characters, Inc., 500 South Buena Vista Street, Burbank, CA 91521; and The Walt Disney Company, 500 South Buena Vista Street, Burbank, CA 91521. Pursuant to 37 C.F.R. § 201.10(d), service of this notice is being made by First Class Mail, postage pre-paid to the above grantees or successors at the addresses shown.

2. The copyrighted work (the “Work”) to which this Notice of Termination applies is the illustrated comic book story entitled “Earth Shall Overcome!” (which story contains the first appearances of the characters Charlie-27, Major Vance Astro, Martinex T’Naga, and Yondu Udonta – collectively, the “Guardians of the Galaxy”), co-authored by Eugene J. Colan (a.k.a Gene Colan),¹ and published and embodied in *Marvel Super-Heroes*, Vol. 1, No. 18 (which includes this issue’s cover page), which issue was registered with the U.S. Copyright Office by Perfect Film & Chemical Corp. and Marvel Comics Group on October 15, 1968 under Copyright Registration No. B474875, and includes all the characters, story elements, and/or indicia appearing therein.²

3. The grant(s) and/or transfer(s) to which this Notice of Termination applies was

¹ This Notice of Termination also applies to all material authored or co-authored by Eugene J. Colan (in any and all medium(s), whenever created) that was reasonably associated with the Work and was registered with the United States Copyright Office and/or published within the termination time window, as defined by 17 U.S.C. § 304(c), and the effective date of this Notice of Termination. This Notice of Termination likewise includes any character, story element, or indicia reasonably associated with the Work including, without limitation, the Guardians of the Galaxy, Charlie-27, Major Vance Astro, Martinex T’Naga, Yondu Udonta, Charlie-26, Maz, Yur, Drang, the Saturnian Hound-Hawks, and Betina Marsh. Every reasonable effort has been made to find and list herein all such material. Nevertheless, if any such material has been omitted, such omission is unintentional and involuntary, and this Notice also applies to each and every such omitted material.

² Pursuant to 37 C.F.R. § 201.10(b)(1)(iii), this Notice of Termination includes the name of at least one author of the Work to which this Notice of Termination applies. The listing herein of any corporation as copyright claimant is done per Copyright Office records, and is not to be construed as an admission that any given work is or was a “work made for hire,” nor is anything else herein to be construed as any such admission. Nothing contained in this Notice of Termination shall be construed to in any way limit or waive any right or remedy that Nanci Solo and/or Erik Colan, may have, at law or in equity, with respect to the subject matter hereof, all of which is hereby expressly reserved.

(were) made in that (those) certain copyright assignment(s) on the back of the check(s) issued by Marvel Entertainment, LLC's ("Marvel") predecessor company(ies) to Eugene J. Colan, with respect to the above-listed Work, which was (were) dated on or about the time of the publication of such Work, as well as any other grant(s) regarding the Work by Eugene J. Colan to Marvel's predecessor(s).³

4. The effective date of termination of the Work shall be October 16, 2024.

5. Eugene J. Colan died on June 23, 2011. His surviving children, Nanci Solo and Erik Colan, are the persons entitled to exercise the termination right pursuant to 17 U.S.C. § 304(c)(2)(B), as to the grant(s) identified herein. This Notice has been signed by all persons needed to terminate said grant(s) under 17 U.S.C. § 304(c).

Dated: September 29, 2021

TOBEROFF & ASSOCIATES, P.C.



Marc Toberoff

23823 Malibu Road, Suite 50-363
Malibu, CA 90265
Tel: (310) 246-3333

As counsel for and on behalf of Nanci Solo
and Erik Colan

³ This Notice of Termination also applies to each and every grant or alleged grant by Eugene J. Colan of rights under copyright in and to the Work that falls within the applicable termination time window (defined by 17 U.S.C. § 304(c) and the effective date of this Notice of Termination). Every reasonable effort has been made to find and list herein every such grant and/or transfer. Nevertheless, if any such grant and/or transfer has been omitted, such omission is unintentional and involuntary, and this Notice of Termination applies as well to each and every such omitted grant and/or transfer.

CERTIFICATE OF SERVICE

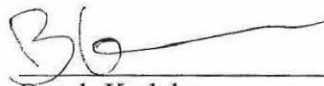
I hereby certify that I caused a true copy of the foregoing document described as
NOTICE OF TERMINATION: "GUARDIANS OF THE GALAXY" to be served this 29th day
of September, 2021, by First Class Mail, postage prepaid, upon each of the following:

To: Marvel Entertainment, LLC
Marvel Worldwide, Inc.
Marvel Property, Inc.
Marvel Characters, Inc.
1290 Avenue of the Americas
New York, NY 10104
Attn: John Turitzin, Chief Counsel
Eli Bard, Deputy Chief Counsel

Marvel Studios, LLC
MVL Rights, LLC
MVL Development, LLC
Marvel Characters, Inc.
500 South Buena Vista Street
Burbank, CA 91521
Attn: David Galluzzi, Chief Counsel

The Walt Disney Company
500 South Buena Vista Street
Burbank, CA 91521
Attn: Alan Braverman, General Counsel

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th
day of September, 2021, at Malibu, California.


Breck Kadaba
Toberoff & Associates, P.C.
23823 Malibu Road, Suite 50-363
Malibu, CA 90265

Counsel for Nanci Solo and Erik Colan